MASTER AND SERVANT—INJURY TO SERVANT—CONTRACT LIMITING MASTER'S LIABILITY.—Action for damages against defendant, as president of the American Express Co., for a personal injury sustained while in the employ of the company. The defense was that plaintiff, by the contract of employment, had executed a release waiving right of action for injuries resulting from the negligence of the company or his co-employees. *Held,* that such release was against public policy and void. *Johnson* v. *Fargo* (1904), — N. Y. —, 90 N. Y. Supp. 725.

The decision is based upon the common law rule of the master's liability and is supported by the courts of almost all the states. *Tarbell* v. *Rutland Ry. Co.,* 73 Vt. 347; 56 L. R. A. 656 and note. The interest that the public at large has in the health, safety, and comfort of the working classes, that might be impaired by permitting ignorant employees, freely and without restraint, to be subject to the dangers of negligence upon the part of the employers, is the foundation of the prohibition upon the master to contract against his negligence. Georgia seems to be the only state where a different rule prevails. It was held in *R. R. Co.* v. *Bishop,* 50 Ga. 465, that, where the servant, by express contract, executes a release to the master, no right of action exists, except in case of criminal negligence upon the part of the employer. This rule was modified in *Cook* v. *West. & A. Ry. Co., 72* Ga. 48, where it was held that any negligence upon the part of a railroad company was to be deemed criminal. This case construed the act of 1876 relating to injuries to railroad employees in discharge of their duties. However, lately, the Supreme Court of that state overruled this last decision by holding that the interpretation put upon the act of 1876 by the court in that case was unreasonable and the old rule, denying a right of action in cases of express release, was again affirmed. *New* v. *Southern Ry. Co.* (1902), 116 Ga. 147; *42* S. E. Rep. 391; 59 L. R. A. 115; *2* MICHIGAN LAW REVIEW, 57 and note.

MASTER AND SERVANT—USE OF UNGUARDED MACHINERY—ASSUMED RISK—LIABILITY OF EMPLOYER UNDER STATUTORY REGULATIONS.—The laws of Washington make it a criminal offense punishable by fine or imprisonment for the owner of a saw-mill to operate a circular saw without certain guards to protect employees. Plaintiff was an employee of defendant, was injured by a saw that was not guarded as the statute provided. He knew before entering the employment that the work was dangerous. *Held,* that he could not recover. *Nottage* v. *Sawmill Phoenix* (1904), 133 Fed. Rep. 979.

At common law where the danger is obvious and known to employee, if he chooses to continue in the employment without any promise or assurance on the part of the master that the dangerous object will be guarded, then he is held to have assumed the risk. But where statutes impose a specific duty, other facts must be taken into consideration. The statute under which this case arose imposed specific duties but did not in terms say that failure to comply with the statute should give a right of action to the employee. This, together with the fact that in law the plaintiff is held to have assumed the risk, is fatal to his right of recovery. There is, however, a strong line of cases supporting the contrary doctrine. In similar cases many courts have

held that the injured party may recover even though the law does not expressly give a remedy. *Monteith* v. *Kokomo,* 159 Ind. 149, 64 N. E. Rep. 610, 58 L. R. A. 944; *Pauley* v. *Steam Gauge Co.,* 131 N. Y. 90, 29 N. E. Rep. 999, 15 L. R. A. 194; *Osborne* v. *McMasters,* 40 Minn. 103, 41 N. W. Rep. 543, 12 Am. St. Rep. 698; *Railroad Co.* v. *Lambright,* 5 Ohio Circuit Ct. Rep. 433. Other courts go still further and hold that the employee has no power to agree either expressly or by implication that the employer shall violate the statute and leave the employee remediless. *Narramore* v. *Cleveland C. C. & St. L. R. R.,* 96 Fed. 298, 37 C. C. A. 499, 48 L. R. A. 68; *Davis Coal Co.* v. *Polland,* 158 Ind. 607, 62 N. E. Rep. 492, 92 Am. St. Rep. 319; *Green* v. *American Car Foundry Co.,* 71 N. E. Rep. 268; *Green* v. *Western American Co.,* 30 Wash. 87, 70 Pac. Rep. 310; *Greenlee* v. *Southern R. R. Co.,* 122 N. C. 977, 30 S. E. Rep. 115.

MUNICIPAL CORPORATION—OBSTRUCTION IN STREET.—Agents of a city placed a barricade across a public street, which the city was repairing, and allowed the obstruction to remain over night without warning to the public by danger signal or otherwise. By reason of such obstruction and the failure to display a danger signal the plaintiff was thrown from his horse and injured. *Held,* that the city was not liable. *Collier* v. *Ft. Smith* (1904), — Ark. —, 84 S. W. Rep. 480.

This decision is sustained by the courts of several states, which hold that the duty of a municipal corporation to keep its streets in repair and free from obstructions is of a governmental and public nature and that, in the absence of express statute, the corporation is not liable to an individual who suffers injury by reason of a negligent act or omission as to such duty. *Arnold* v. *San Jose,* 81 Cal. 618; *Hewison* v. *New Haven,* 37 Conn. 475; *Mitchell* v. *Rockland,* 52 Me. 118; *Detroit* v. *Blackely,* 21 Mich. 84; *Baxter* v. *Winooski Turnpike Co.,* 22 Vt. 114. The weight of authority, however, is, that by voluntarily accepting a special charter or by organizing under a general law, such charter or law giving the municipal corporation power to control the streets, the corporation impliedly contracts with the state to faithfully perform all the duties connected therewith; and that this contract enures to the benefit of every individual who is interested in its performance. WILLIAMS ON MUNICIPAL LIABILITY FOR TORT, § 71; DILLON, MUNICIPAL CORPORATIONS (4th Ed.), § 1018; *Barnes* v. *District of Columbia,* 91 U. S. 540; *King* v. *The City of Cleveland* (c. c.), 28 Fed. Rep. 835; *The City of Aurora* v. *Rockabrand,* 149 Ill. 399; *Senhenn* v. *The City of Evansville,* 140 Ind. 675; *Stafford* v. *The City Oskaloosa,* 64 Ia. 251; *West Kentucky Tel. Co. et al.* v. *Pharis,* 78 S. W. Rep. 917; *Pettengill* v. *The City of Yonkers,* 116 N. Y. 558; *Van Vranken* v. *The Village of Clifton Springs,* 86 Hun. 67; *Arthur* v. *The City of Charleston,* 51 W. Va. 132; *Weightman* v. *The Corporation of Washington,* 1 Black, 39.

PARENT AND CHILD—PARENT'S OBLIGATION TO SUPPORT CHILD—CONTRACT—DURESS.—A decree granting divorce allowed the divorced wife two thousand dollars and the custody of the only child. Shortly after obtaining